



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,  
KALABURAGI DISTRICT.**

**:PRESENT:**

**SRI. S.M. ARUTAGI**  
B.com. LLB., (Spl)  
**SENIOR CIVIL JUDGE, ALAND.**  
**O.S. No.49/2019**

**DATED THIS THE 01<sup>st</sup> DAY OF JUNE 2024**

**Plaintiff:** Mansing S/o Sitaram Rathod,  
Deleted since deceased (a to i),

**V/s**

**Defendant:** Sonabai W/o Laxman,

**PARTIES TO THE INTERIM APPLICATION**

**PARTIES TO ORDER**

**Applicants** Dhanabai W/o Mansing Rathod,  
**Lrs of** Age: 66 Years, Occ: Agriculture,  
**Plaintiff** R/o Teerth Thanda, Tq. Aland,  
Dist. Kalaburagi & others,

(By Sri. B.A. Deshpande, Advocate)



**Vs.**

**Opponent/  
Defendant**      Sonabai W/o Laxman,  
Age: 55 Years, Occ: Agriculture,  
R/o Teerth Road Tanda,  
Tq. Aland, Dist. Kalaburagi.  
  
(By Sri. V. D. J., Advocate)

**ORDER ON APPLICATION FILED UNDER ORDER XXVI  
RULE 10(a) OF CPC, BY THE LRS OF PLAINTIFF.**

This is an application filed by the Lrs of the plaintiff under order XXVI Rule 10(a) of CPC, to appoint the finger print expert as court commissioner to observe and report and admitted and disputed thumb impression of the defendant on the documents already filed in this case by allowing the application in the interest of justice and equity.

2. In the affidavit annexed to the application, it is stated that during the lifetime of his father had filed the suit for specific performance of contract against the defendant with respect to the suit property, unfortunately,



his father was died during the pendency of the suit. The plaintiff has already produced the alleged agreement of sale deed dated 30-01-2017, which is marked at Ex.P-1 and the said document bears thumb mark of defendant in three pages. The defendant in her written statement has put her thumb impression and even, she has been examined as DW-1 and in the cross-examination, she totally denied her thumb impression not only on the agreement for sale, but on all other documents produced by herself i.e., the written statement and vakalat of her counsel. So, the forensic science of identification of thumb mark is developed to such an extent that by examining the dispute and admitted thumb impression by expert, one can definitely conclude as to whether they are the same person or not and even, the Lrs of the plaintiff is ready to bear the expenses of finger print express. Though the application has been filed at fag end, but the court has power to allow the application. On these grounds sought for allow the application and



appointment of thumb impression expert is very much necessary and it is easily to resolve the dispute between the parties to the suit.

3. On the other hand, the defendant has filed detailed objection stating that the application is not maintainable in the eye of law. It is further contended that the alleged thumb impression at Ex.P-1 is created by plaintiff colluding with one Gulab S/o Dhannu Rathod of Teertha Thanda and therefore, sending the admitted and disputed thumb impression to the finger print expert is unnecessary and waste of time. The Lrs of the plaintiff in order to protract the proceedings of this court and to waste and spoil the precious time of this court, filed this false application which is not maintainable. On these grounds, prayed for dismissal of the application with costs.

4. Heard arguments on both side.

5. On the above pleadings, the following point that arise for my consideration



1) *Whether the Lrs of the plaintiff have made out reasonable grounds to appoint the court commissioner to ascertain the thumb impression of defendant marked at Ex.P-1 document and allow his application ?*

2)) *What order ?*

6. My answer to the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per order below for the

following :

### **REASONS**

7. **Point No.1:** It is pertinent to note that the original plaintiff has filed this suit for the relief of specific performance of contract against the defendant with respect to the suit schedule property. When the matter was posted for argument on the side of plaintiff, the Lrs of the plaintiff come up with present application to appoint the thumb impression expert to ascertain the LTM of defendant at Ex.P-1.



8. On meticulously perusal of entire documents, the plaintiff has filed the suit for the relief of specific performance of contract on the basis of agreement of sale alleged to be executed by the defendant dated 31-01-2017 and same is notarized on 01-02-2017. The defendant in her written statement, she totally denied the execution of alleged agreement of sale deed and even, in her cross-examination, she totally denied the execution of alleged Ex.P-1 and even, she has denied the LTM found in her written statement as well as vakalat filed through her counsel.

9. So, looking to the denial of thumb impression of defendant at alleged Ex.P-1, in the written statement and vakalat filed through her counsel, then it is necessary to appoint the commissioner i.e., the finger print expert to observe the LTM of defendant found in the alleged Ex.P-1 in three place as well as in the written statement and vakalat. At this juncture, I would like to rely upon a decision



**reported in AIR 2011 AP 78, in a case of Jalagadugula Eswara Rao & others V/s Davala Surya Rao**, wherein his lordship has held that,

*“A cogent reading of the above provisions make it clear that it is the discretion of the Court to send any disputed document to an Handwriting Expert for his opinion so as to ascertain whether the signature of the thumb impression is forged or not. Such discretion has to be exercised judiciously and in a fair manner. Whether to send a disputed document to the Handwriting Expert or not depends upon the nature of the rival contentions of the parties and the nature of evidence already let in. If there are laches on the part of the parties in protracting the litigation, the Court may impose costs or pass conditional orders. But that cannot be a ground to deny the relief sought by the parties at the time of trial.”*

*“As far as the Trial Courts are concerned, the Trial Courts should allow the parties to adduce the oral and documentary evidence*



*intended to be adduced by them, of course, which appears to be relevant for the purpose of the case. The doors of the Trial Court should not be closed at this stage, denying the opportunity to any party, to adduce any evidence. When a document is said to be forged and when a party has specifically denied the signature or the thumb impression on that particular document, such party should certainly have an opportunity to send the document to the Handwriting Expert for comparison of the disputed signatures or the thumb impression with admitted signatures of the thumb impressions.”*

*“Of course, the evidence of the expert is also not conclusive. The Court has to examine the entire evidence on record, probabilities of the case including the evidence of the Handwriting Expert and on critical analysis, it should come to a conclusion. But at the stage of trial of a case, the Trial Court must give reasonable opportunity to the parties to adduce evidence. Of course, where the parties are not*



*diligent or intending to protract the litigation, the Court may pass conditional order imposing suitable conditions.”*

10. On perusal of of the above cited decision, his lordship has clearly held that “no time could be fixed for filing the applications under section 45 of Indian Evidence Act for sending the disputed signature or writing to the Handwriting Expert for comparison and opinion and same shall be left open to the discretion of the Court for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of each case. Furthermore, it is settled position of law that the court commissioner cannot be appointed to collect the evidence in a case after completion of evidence on both side, but if there is a ambiguity in the evidence so adduced, then the court may appoint the commissioner for the purpose of clarification of such a ambiguity. Hence, the ratio laid down in the above decision is squarely applicable to the present case on hand.



11. In the instant case, the defendant after her appearance, she totally denied the case of the plaintiff and the alleged execution of Ex.P-1 and moreover, she denied her LTM found in the written statement as well as vakalat filed through her counsel. So, there is an ambiguity in the evidence adduced by the DW-1 and even, the burden is on the plaintiff to prove the alleged execution of Ex.P-1 document and also receiving of sale consideration amount. So, in order to give complete justice to the parties to the suit, the appointment of court commissioner is very much necessary to compare the thumb impression found in Ex.P-1, written statement and vakalatnama belongs to the defendant. Otherwise, the Lrs of the plaintiff will be put to great and irreparable loss. Hence, as discussed above and having regards to the over all facts and circumstances of the case, I am of the opinion that the appointment of court commissioner is necessary to ascertain whether the document at Ex.P-1 bears the thumb impression of



defendant or not. Hence, the Lrs of the plaintiff has made out sufficient grounds to allow their application. Accordingly, I answer **point No.1 in the negative.**

12. **Point No.2:-** For the above said reasons, I proceed to pass the following;

### **ORDER**

Interim Application filed by the Lrs of plaintiff under order XXVI Rule 10(a) of CPC, is hereby allowed on costs of Rs.500/-.

The counsel for the Lrs of the plaintiff is directed to suggest the name of finger print expert and also furnish the particulars and details of finger print expert.

(Dictated to the Stenographer, transcribed by her, then corrected by me and pronounced in open court on this the 01<sup>st</sup> day of June, 2024)



Senior Civil Judge,  
Aland.

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